

BR

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FREIGHTQUOTE.COM, INC.,

Plaintiff,

v.

PACIFIC ATLANTIC FREIGHT,

Defendant.

Civil Action No. 1:08-cv-00823

Judge St. Eve
Magistrate Judge Nolan

FILED

APR 21 2008
APR 21, 2008
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

**MOTION TO QUASH SERVICE OF PROCESS AND
MOTION TO DISMISS**

This day comes the Defendant, Dennis Gershman d/b/a Pacific Atlantic Freight, incorrectly sued herein as Pacific Atlantic Freight (hereinafter "Defendant"), by counsel, and moves this Honorable Court, pursuant to Fed. R. Civ. P. 12 (b) (5), to quash the service of process and dismiss this matter, and in support thereof states as follows:

1. The named Defendant in this action, Pacific Atlantic Freight, is a non-entity. The actual Defendant is a sole proprietorship doing business under a fictitious business name. (See Exhibit A.) The Plaintiff has not sued the individual proprietor but has used terms that do not accurately identify a business entity capable of being sued. The Defendant is not identified as a sole proprietor, a sole proprietor t/a (or d/b/a), a trade name, a general partnership with individual partners listed, a limited partnership setting forth the general partner and the limited partnership name, a corporation, an unincorporated association, or any other name representing a competent defendant. This misidentification is more than a misnomer; it is the complete failure to name a competent

defendant against which a judgment can be properly rendered and execution properly issued.

2. Plaintiff has claimed that it served Pacific Atlantic Freight (hereinafter "PAF") pursuant to Cal. Code Civ. P. § 415.20(b). This section provides for the method of service when "a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served." *Id.* The statute also requires that if service is to be effectuated in accordance with this statute, that follow up service by "first class mail, postage prepaid" is required. *Id.* Plaintiff did not exercise reasonable diligence to personally deliver the summons and complaint on the Defendant in order to avail itself of service pursuant to this statute and did not follow up its service by the appropriate first class, postage prepaid mailing.

3. If the Plaintiff acted with reasonable diligence prior to the filing of the lawsuit and prior to attempting to effectuate service, it would have identified Dennis Gershman as the individual owner operating his business as Pacific Atlantic Freight. A simple search on the Internet using any popular, highly ranked website providing online public information about businesses and individuals would have provided the Plaintiff with the necessary information about Gershman, his business and most importantly, his home address. Annexed hereto as Exhibit B is a copy of the search results from www.peoplefinders.com, one of the most highly trafficked websites on the Internet. In fact, Plaintiff was able to get this information, but did not do so until after it had filed its Complaint, after its purported "service" of the Complaint, and after it filed its Motion for Entry of Default.

4. As the Court is aware, this case centers upon the alleged use of the domain www.www-freight-quotes.com (hereinafter "the domain"). The domain name registration, a public record easily available online, provides an email address contact for the domain name owner. Annexed hereto as Exhibit C is a copy of the WHOIS information for the domain www.www-freight-quotes.com. No notice was ever sent to this email address that is listed in the contact information for the owner of the domain name. This email has been the listed contact since the domain name was registered on March 15, 2006. This email address has never been changed and is still active. Nonetheless, Plaintiff made no attempt to contact the owner of the domain through this email address.

5. Plaintiff claims that it has served the Defendant in accordance with the provisions of Cal. Code Civ. P. § 415.20(b). As indicated, this method of service requires that, after leaving a copy of the summons at the usual place of business or usual mailing address other than a United States Postal Service post office box, the Plaintiff is required to mail "a copy of the summons and of the complaint by first-class mail, postage prepaid, to the person to be served at the place where a copy of the summons and complaint were left." *Id.* On February 13, 2008, a copy of the summons and complaint was served on Chimata Gandhi, the "owner of the mail forwarding location." Plaintiff has never sent "a copy of the summons and of the complaint by first-class mail, postage prepaid, to the person to be served at the place where a copy of the summons and complaint were left." Plaintiff did, however, send a copy of the summons and complaint by Federal Express on March 5, 2008. As the Court of Appeals for the Seventh Circuit has held, "Federal Express is not first class mail." *Audio Enterprises, Inc. v. B&W*

Loudspeakers of America, 957 F.2d 406, 409 (7th Cir. 1992); *see also Magnuson v. Video Yesteryear*, 85 F.3d 1424 (9th Cir. 1996). As such, Plaintiff has never completed service.

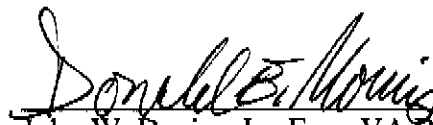
6. Even if Plaintiff has named a proper party and even if reasonable diligence is found and even if service is deemed to be effective, the entry of default was premature. According to Cal. Code Civ. P. § 415.20(b), "Service of a summons is deemed complete on the 10th day after the mailing." Here, if Federal Express is accepted as proper mailing, then service would have not been completed until Saturday, March 15, 2008, at the earliest. Thus, Defendant would have 20 days from March 15, 2008 to file its responsive pleadings, which would be April 4, 2008. Plaintiff filed its Motion for entry of default on March 27, 2008 and this court granted the motion for entry of default on April 3, 2008. It is respectfully submitted that the Plaintiff's request for entry of default was untimely, improper, and based on both a misrepresentation of the effective date of service and the misinterpretation of the California statute on which it relied.

7. It is respectfully submitted that, based on the foregoing facts, service of process was never completed and, therefore, this court lacks personal jurisdiction over the Defendant.

8. Wherefore, Defendant moves this Court to set aside the Service of Process, the Order of Entry of Default, and further to dismiss this matter based upon insufficiency of service of process and the failure of the Plaintiff to initiate a legal action against a competent and legally recognizable party.

Dated: April 21, 2008

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "John W. Dozier, Jr.", written in black ink.

John W. Dozier, Jr., Esq., VA Bar # 20559

Pro Hac Vice (Application Pending)

jwd@cybertriallawyer.com

Donald E. Morris, Esq., VA Bar # 72410

Pro Hac Vice (Application Pending)

don@cybertriallawyer.com

DOZIER INTERNET LAW, P.C.

301 Concourse Blvd.

West Shore III, Suite 300

Glen Allen, VA 23059

Phone: (804) 346-9770

Fax: (804) 346-0800

Exhibit A



DEM ✓
FILE

4607 Lakeview Canyon Rd. Ste #341, Westlake Village, CA 91361 • 818-735-0494
Fax: 805-267-4832 • www.pafshipping.com • Email: ashleep@pafshipping.com

FAX



COPY

PAGES:(Inc Cover) 3

DATE: 4/18/08

ATTENTION TO: John Dozier and Don Morris

FROM: Ashlee Pope

RE: _____

COMMENTS Attached is the DBA name filing paperwork.

Best Regards,
Ashlee

Ann Robinson

This page is part of your document - DO NOT DISCARD

05 1988177

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA

3:21 PM AUG 18 2005

TITLE(S) : Fictitious Name Statement



LEAD SHEET

FEE

D.T.T.

FEE \$31 BH

CODE
20

CODE
19

CODE
9

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company In black Ink.

Number of AIN's Shown

THIS FORM IS NOT TO BE DUPLICATED

04/19/2008 03:10 8052674837

GRW PAF

PAGE 02/02

A Your Return Mailing Address

Name: **Dennis Gershman**

Address: **2899 Agoura Rd. Ste #310**

City: **Westlake Village** State: **CA** Zip Code: **91361**

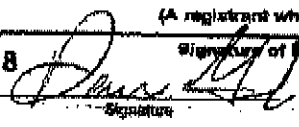
REGISTRAR - RECORDER / COUNTY CLERK'S FILING STAMP

05 1988177

1 ☐ First Filing ☐ Renewal Filing
Check one only

FICTITIOUS BUSINESS NAME STATEMENT

THE FOLLOWING PERSON(S) IS (ARE) DOING BUSINESS AS: (Attach additional pages if required)

2	Fictitious Business Name(s)		3. Pafshipping.com
	1. Pacific Atlantic Freight 2. P.A.F. 4. Freightshippingcenter.com		Articles of Incorporation or Organization Number (if applicable) AI #/ON
3	Street Address, City & State of Principal Place of Business in California (P.O. Box alone not acceptable) 6167 Lake Lindero Drive, Agoura Hills CA 91301		
4	Full name of Registrant / Corporation / Limited Liability Company (If corporation - incorporated in what state) Dennis Gershman		
	Residence Street Address (P.O. Box not accepted) City	State	Zip Code
	6167 Lake Lindero Drive Agoura Hills	CA	91301
4A	Full name of Registrant / Corporation / Limited Liability Company (If corporation - incorporated in what state)		
	Residence Street Address (P.O. Box not accepted) City	State	Zip Code
4B	Full name of Registrant / Corporation / Limited Liability Company (If corporation - incorporated in what state)		
	Residence Street Address (P.O. Box not accepted) City	State	Zip Code
5	This Business is conducted by: (check one only) <input checked="" type="checkbox"/> an individual <input type="checkbox"/> a general partnership <input type="checkbox"/> joint venture <input type="checkbox"/> a business trust <input type="checkbox"/> co-partners <input type="checkbox"/> husband and wife <input type="checkbox"/> a corporation <input type="checkbox"/> a limited partnership <input type="checkbox"/> an unincorporated association other than a partnership <input type="checkbox"/> a limited liability company <input type="checkbox"/> other		
6	() The registrant commenced to transact business under the fictitious business name or names listed on (Date): (<input checked="" type="checkbox"/>) Registrant has not yet begun to transact business under the fictitious business name or names listed herein.		
7	I declare that all information in this statement is true and correct. (A registrant who declares as true information which he or she knows to be false is guilty of a crime.)		
8	Signature of Registrant(s)  Dennis Gershman Signature type/print name		8A If Registrant is a CORPORATION or LLC, sign below Corporation Name / Limited Liability Company Signature Title Type or Print Name

This statement was filed with the County Clerk of **LOS ANGELES** County on date indicated by file stamp above.

NOTICE - THIS FICTITIOUS NAME STATEMENT EXPIRES FIVE YEARS FROM DATE IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED PRIOR TO THAT DATE. The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the rights of another under federal, state, or common law (See Section 14411 et seq., Business and Professions Code)

Customer Service: (310) 367-2821. Form must accompany one of the following: check, cashiers check, money order or online payment receipt. Please mail items to Chamber of Commerce Journal, P.O. Box 882066, Los Angeles, CA 90009-3020.

ATTN KOBIN DEM
FILE

This page is part of your document - DO NOT DISCARD

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RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA

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TITLE(S) : Fictitious Name Statement



LEAD SHEET

FEE

D.T.T.

FEE \$31 BH

CODE
20

CODE
19

CODE
9

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

THIS FORM IS NOT TO BE DUPLICATED

A Your Return Mailing Address

Name: **Dennis Gershman**

Address: **2899 Agoura Rd. Ste #310**

City: **Westlake Village** State: **CA** Zip Code: **91361**

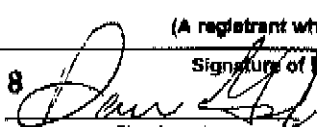
REGISTRAR - RECORDER / COUNTY CLERK'S FILING STAMP

05 1988177

1	<input checked="" type="checkbox"/> First Filing <input type="checkbox"/> Renewal Filing Check one only
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FICTITIOUS BUSINESS NAME STATEMENT

THE FOLLOWING PERSON(S) IS (ARE) DOING BUSINESS AS: (Attach additional pages if required)

2	Fictitious Business Name(s)		3. Pafshipping.com
	1. Pacific Atlantic Freight		Articles of Incorporation or Organization Number (if applicable)
	2. P.A.F	4. Freightshippingcenter.com	AI #/ON
3	Street Address, City & State of Principal Place of Business in California (P.O. Box alone not acceptable) 6167 Lake Lindero Drive, Agoura Hills CA 91301		
4	Full name of Registrant / Corporation / Limited Liability Company Dennis Gershman		(if corporation - incorporated in what state)
	Residence Street Address (P.O. Box not accepted) City	State	Zip Code
	6167 Lake Lindero Drive Agoura Hills CA 91301		
4A	Full name of Registrant / Corporation / Limited Liability Company		(if corporation - incorporated in what state)
	Residence Street Address (P.O. Box not accepted) City	State	Zip Code
4B	Full name of Registrant / Corporation / Limited Liability Company		(if corporation - incorporated in what state)
	Residence Street Address (P.O. Box not accepted) City	State	Zip Code
5	This Business is conducted by: (check one only) <input checked="" type="checkbox"/> an individual <input type="checkbox"/> a general partnership <input type="checkbox"/> joint venture <input type="checkbox"/> a business trust <input type="checkbox"/> co-partners <input type="checkbox"/> husband and wife <input type="checkbox"/> a corporation <input type="checkbox"/> a limited partnership <input type="checkbox"/> an unincorporated association other than a partnership <input type="checkbox"/> a limited liability company <input type="checkbox"/> other		
6	<input type="checkbox"/> The registrant commenced to transact business under the fictitious business name or names listed on (Date): _____ <input checked="" type="checkbox"/> Registrant has not yet begun to transact business under the fictitious business name or names listed herein.		
7	I declare that all information in this statement is true and correct. (A registrant who declares as true information which he or she knows to be false is guilty of a crime.)		
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Customer Service: (310) 367-2821. Form must accompany one of the following: check, cashiers check, money order or online payment receipt. Please mail items to Chamber of Commerce Journal, P.O. Box 882068, Los Angeles, CA 90009-3020.

Exhibit B

<< Back to PeopleFinders

GERSHMAN, DENNIS in CA

People Search Report

 Print this Page



Person	Addresses	Phone Numbers	Related People
1 DENNIS GERSHMAN ASSOCIATED BUSINESS: FRIEGHTSHIPPINGCENTER.COM COMPUTER PROCESSING AND DATA PREPARATION AND PROCESSING SERVICES P A F PACIFIC ATLANTIC FREIGHT TRUCKING, EXCEPT LOCAL	ADDRESS 1: 6167 LAKE LINDERÓ DR AGOURA HILLS, CA 91301		RELATIVES: GREGORY D GERSHMAN JORDAN L GERSHMAN CHRISTIE E GERSHMAN DON G GERSHMAN

Exhibit C



Keep track of your portfolio! Download the Free Stock Ticker

Free Download • No Spyware • 5 Stylish Themes • Unlimited Symbols • Variable Scroll Speed • Unobtrusive

Here is a sample of some of the domains available at auction in 2 days 16 hours, are you eligible to bid?

Cosmetics.net: \$5,000	SendBulkEmail.com: \$900	SleepRelief.com: \$2,500	FloorRemodeling.com: \$1,000
SeoQuiz.com: \$2,500	HomeDesktops.com: \$6,000	HollywoodHousing.com: \$1,000	Hobbyist.com: \$30,000
Rainfalls.com: \$2,000	HuntingtonCalifornia.com: \$1,850	GreatHaircut.com: \$100	Holiday.com: \$6,499,999
Range.com: \$51,000	Chopstick.com: \$3,500	MortgageProposal.com: \$0	Q11.com: \$60,000

Whois Record for Www-freight-quotes.com (Www Freight Quotes)

Front Page Information

Website Title: None given.
AboutUs: Wiki article on [Www-freight-quotes.com](#)
SEO Score: 61%
Terms: 27 (Unique: 23, Linked: 2)
Images: 0 (Alt tags missing: 0)
Links: 1 (Internal: 0, Outbound: 1)
IFrames: 1 (Parts of page not indexable by most search engines.)

Registry Data

ICANN Registrar: TUCOWS INC.
Created: 2006-03-15
Expires: 2009-03-15
Registrar Status: clientTransferProhibited
Registrar Status: clientUpdateProhibited
Name Server: NS1.RENEWYOURNAME.NET (has 116,838 domains)
Name Server: NS2.RENEWYOURNAME.NET
Whois Server: whois.tucows.com

Server Data

IP Address: 216.40.33.31
IP Location: - Ontario - Toronto - Tucows International
Response Code: 200
Blacklist Status: Clear
Domain Status: On-hold (generic)

DomainTools Exclusive

Registrant Search: "2899 Agoura Rd. Ste #310" owns about 127 other domains
Email Search: [whoiswebsite@aol.com](#) is associated with about 138 domains
[hostmaster@powerweb.com](#) is associated with about 450,002 domains
Registrar History: 1 registrar
NS History: 7 changes on 4 unique name servers over 2 years.
IP History: 8 changes on 4 unique name servers over 2 years.
Whois History: 3 records have been archived since 2007-10-28.
Reverse IP: 107,603 other sites hosted on this server.
Monitor Domain: Set Free Alerts on [www-freight-quotes.com](#)
Free Tool:

Whois Record

Registrant:

Thumbnail:



SEO Text Browser

SEO Text Browser

The domain [www-freight-quotes.com](#) has expired. Please contact your domain name registration service provider for further assistance. If you need help identifying your service provider, visit <http://domainhelp.tucows.com>.

<http://www.www-freight-quot...>

Disable SEO Text Browser (Beta)

Other TLDs

.com .net .org .biz .info .us

Symbol Key

2899 Agoura Rd. Ste #310
Westlake Village, CA 91361
US

Domain name: WWW-FREIGHT-QUOTES.COM

Administrative Contact:

gershman, ashley whoswebsite@aol.com

2899 Agoura Rd. Ste #310
Westlake Village, CA 91361
US

8187350499

Technical Contact:

Manager, Domain hostmaster@powerweb.com

2800 28th Street Suite 205
Santa Monica, California 90405
US

+1.8885114678 Fax: +1.3103141610

Registration Service Provider:

iPowerWeb, hostmaster@powerweb.com

888 511 4678
602-307-5438 (Fax)
<http://IPOWER.com>

Available
Available (Previously registered)
Registered (Active website)
Registered (Parkd or redirected)
Registered (No website)
On-Hold (Generic)
On-Hold (Redemption Period)
On-Hold (Pending Delete)
Monitor
Preview
No preview
Buy this (Available)
Buy this (Bid at auction)



Do you own high-quality generic domains? List them in the April 21st DomainTools Live Auction at the Domain Roundtable Conference in San Francisco. Want to ensure your domain is listed? [Register now](#) for the conference - every attendee has a guaranteed-acceptance slot of one domain in the Live Auction.

[Submit a Domain](#) - Sign up for the Roundtable.

Customize This Page

Select the items you want to be shown on this page.

- ☒ Front Page ☒ Indexed Data
☒ Server Data ☒ Registry Data
☒ Exclusive Data ☒ Whois Record

Domains for Sale

Domain	Price
PowersFreight.com	\$199.00
CleanFreight.com	\$500.00
ExtraFreight.com	\$500.00
FreightTips.com	\$500.00
ScanFreight.com	\$500.00
PublicFreight.com	\$780.00
UrgentFreight.com	\$875.00
FlexFreight.com	\$1,000.00
FreightPeople.com	\$1,188.00
InlandFreight.com	\$1,588.00
AskFreight.com	\$1,688.00

Domains At Auction

Domain	Auction Date
EastWindTransport.com	04-19-2008
TrallorTransport.com	04-19-2008
HuGollEscargo.com	04-19-2008
WcTransport.com	04-19-2008
CargoU.com	04-19-2008
UwFreightLine.com	04-19-2008
NeAttTransport.com	04-19-2008
NeAttTransport.net	04-19-2008

Compare Similar Domains

Domain	Created
Www	1998-11-02
Www....Com	1999-12-15

<u>Wwvz</u>	2002-02-02
<u>Wwvzw</u>	2003-02-03
<u>Wwv X</u>	2004-03-29
<u>Www --- Sarah Put</u>	2004-09-21
<u>Someh...</u>	
<u>Www --- Casino</u>	2004-11-06
<u>Ww Vw W</u>	2005-06-25
<u>Wwv Y</u>	2006-02-02
<u>Wwvzw Pix</u>	2006-06-02
<u>Www --- Auto Insurance</u>	2006-10-09
<u>Www --- Sex</u>	2006-10-14
<u>Www --- Party Poker</u>	2006-10-21
<u>Www --- Pkers Tars</u>	2006-11-27
<u>Www --- Amazon</u>	2007-01-19



Www-freight-quotes.com on 2007-10-28 - Domain History

[Next »](#)

Domain: www-freight-quotes.com - Domain History

Cache Date: 2007-10-28

Registrar: TUCOWS INC.

Registrant Search: Click on an email address we found in this whois record to see which other domains the registrant is associated with:
whoiswebsite@aol.com hostmaster@ipowerweb.com

Registrant:

--

2899 Agoura Rd. Ste #310
Westlake Village, CA 91361
US

Domain name: WWW-FREIGHT-QUOTES.COM

Administrative Contact:

gershman, ashlee whoiswebsite@aol.com
2899 Agoura Rd. Ste #310
Westlake Village, CA 91361
US
8187350499

Technical Contact:

Manager, Domain hostmaster@ipowerweb.com
2800 28th Street Suite 205
Santa Monica, California 90405
US
+1.8885114678 Fax: +1.3103141610

Registration Service Provider:

iPowerWeb, hostmaster@ipowerweb.com
888 511 4678
602-307-5438 (fax)
<http://IPOWER.com>



Www-freight-quotes.com on 2008-02-08 - Domain History

[< Previous](#)

[Next >](#)

Domain: **www-freight-quotes.com - Domain History**

Cache Date: 2008-02-08

Registrar: **TUCOWS INC.**

Registrant Search: Click on an email address we found in this whois record to see which other domains the registrant is associated with:
[whoiswebsite@aol.com](#) [hostmaster@ipowerweb.com](#)

Registrant:

--

2899 Agoura Rd. Ste #310
Westlake Village, CA 91361
US

Domain name: WWW-FREIGHT-QUOTES.COM

Administrative Contact:

gershman, ashlee [whoiswebsite@aol.com](#)
2899 Agoura Rd. Ste #310
Westlake Village, CA 91361
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8187350499

Technical Contact:

Manager, Domain [hostmaster@ipowerweb.com](#)
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Santa Monica, California 90405
US
+1.8885114678 Fax: +1.3103141610

Registration Service Provider:

iPowerWeb, [hostmaster@ipowerweb.com](#)
888 511 4678
602-307-5438 (fax)
<http://IPOWER.com>



Www-freight-quotes.com on 2008-03-14 - Domain History

[« Previous](#)

Domain: [www-freight-quotes.com](#) - [Domain History](#)

Cache Date: 2008-03-14

Registrar: TUCOWS INC.

Registrant Search: Click on an email address we found in this whois record to see which other domains the registrant is associated with:
[whoiswebsite@aol.com](#) [hostmaster@ipowerweb.com](#)

Registrant:

--

2899 Agoura Rd. Ste #310
Westlake Village, CA 91361
US

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8187350499

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Santa Monica, California 90405
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+1.8885114678 Fax: +1.3103141610

Registration Service Provider:

iPowerWeb, [hostmaster@ipowerweb.com](#)
888 511 4678
602-307-5438 (fax)
[http://IPOWER.com](#)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FREIGHTQUOTE.COM INC.

PLAINTIFF

VS.

PACIFIC ATLANTIC FREIGHT

DEFENDANT

CASE NO. 1:08-cv-00823

PROOF OF SERVICE

TO: RAYMOND P. NIRO JR.
Niro, Scavone, Haller & Niro
181 West Madison, Suite 4600
Chicago, IL 60602

TO: _____

TO: _____

I, the undersigned (plaintiff / defendant), certify that on the 21st day of April, 2008, I
served a copy of this Notice of Motion and Motion to each person whom it is directed by way of
Hand Delivery in Court

Name Donald E. Morris

Address 301 Concourse Blvd, West Shore III, Suite 300

City/Zip Glen Allen, VA 23059

Telephone (804) 346-9770

Donald E. Morris

SIGNATURE / CERTIFICATION

April 21, 2008
DATE